RECENT CASES.

Assault — What Constitutes. — *Ray* v. *State*, 21 S. W. Rep. 540 (Texas). Defendant and his brother, Rev. C. H. Ray, armed with two Winchesters, demanded of an editor a written retraction of an article reflecting upon the brother, and "it being somewhat slow in coming the defendant hastened proceedings by throwing a shell into his rifle. The retraction was signed." Held, that this was sufficient to constitute an assault.

Arbitrators — Disagreement — Method of Award. — *Luther* v. *Medbury*, 26 Atl. Rep. 37 (R. I.). Two arbitrators were unable to agree upon an award, but instead of choosing a third arbitrator, as provided by the submission, and in order to avoid the trouble of hearing the case a second time, they arrived at a decision by dividing by two the aggregate of the sums to which each thought the plaintiff entitled. The award was held to be void, on the ground that a similar method of reaching a conclusion has been held sufficient to vitiate the verdict of a jury. "The parties to a submission are entitled under it to the judgment of the arbitrators; and if the method pursued by them precludes the exercise of their judgment, the parties do not get that for which they have stipulated. Moreover, in the present case the submission provided that in case the arbitrators named in it were unable to agree, they should choose a third. They were, therefore, not at liberty to adopt any other mode of procedure."

Criminal Law — Interest of Witness — Credibility. — *Townsend* v. *State*, 12 Southern Reporter 209 (Miss.). In a very brief decision the court held that the defendant, being one of several witnesses in his own behalf, but being the only one interested in the result of the verdict, it was error for the trial court to single him out in the instructions by charging the jury that they might consider the the interest of any witness in connection with all the evidence, in determining how far, if at all, they would believe him; the effect of this being to discredit the defendant in the minds of the jury.

Insurance — Appraisement of Loss — Disinterested Person — Misrepresentation by Defendant — Fraudulent Award. — *Bradshaw et al.* v. *Agricultural Insurance Co.*, 32 N. E. Rep. 1055 (N. Y.). An

insurance policy contained the provision that in case of disagreement as to amount of loss, competent and disinterested appraisers should be appointed to ascertain the loss. A fire occurred and the insured property was almost destroyed. Without attempting to agree as to the amount of the loss, defendant's agent suggested the appointment of appraisers, and named for defendant's appraiser a man residing in a distant town and unknown to plaintiffs, representing him to be a fair-minded man and entirely disinterested. The plaintiffs refused to accept the award, and brought this suit to recover the full amount of the policy. On trial it was in evidence that defendant's appraiser had often served in this capacity for defendant, and that in this appraisal he had acted more as a representative of defendant than as an impartial referee. The jury rendered a verdict in favor of plaintiffs, and defendant appealed, claiming that since its appraiser is not shown to have had any pecuniary interest in the amount of the loss, he was legally a disinterested party, as provided by the policy, and that the appraisers' award should not be set aside. The court held that an appraiser is in no sense the agent of the party nominating him, and he remains at all times under the duty to be fair and impartial, or, in the languge of the policy, "disinterested." The word disinterested, as used in such policies, is not confined to a lack of pecuniary interest in the question of loss, but means, also, that the person must be unprejudiced and without bias.

Railroad Sale — Purchase by Director — Fraud. — Osborne's Adm'x v. *Marks et al.*, 21 S. W. Rep. 101 (Ky.). At the sale of the Southern Pacific Railroad, Hall, a director of the road, bought it in the interest of the bondholders. The road was bankrupt, and the price paid was full value, but after reorganization the property became valuable. Action was then brought to rescind the sale on the ground that Hall, being a director and making the purchase, held the road, as trustee, for the old corporation, and, also, was guilty of fraud in procuring the sale and investing himself with title. It was held that although the purchaser was a director of the original company, this did not, in this case, make him responsible to that company as a trustee. Although the acts of a director or trustee, dealing with the subject of his trust, will generally be declared void at the instance of the corporation he represents, yet a director may lend money to the corporation and secure the loan by mortgage or otherwise, and his connection with the company will not prevent his enforcing the lien and collecting the debt. It is no fraud or breach of trust for a director, as